

**GUIDE
FOR
PRO SE
PETITIONERS
AND
APPELLANTS**

GUIDE FOR PRO SE PETITIONERS AND APPELLANTS

Appearing pro se or by counsel; unions; veterans organizations; nonlawyer representatives; deceased appellants or petitioners; corporations; associations.

1. You as an individual may conduct your own case pro se in the United States Court of Appeals for the Federal Circuit. (“Pro se” means “in his own behalf.”) If you are pro se, you must file a written entry of appearance, within 10 days after your case is docketed, on the form provided by the clerk. Alternatively, you may be represented by a lawyer admitted to practice before this court. If legal counsel enters an appearance, only counsel may conduct the case. The court has no procedure to appoint counsel for you. A union, veterans organization, or other nonlawyer representative may not represent you in this court even if such represented you before the Merit Systems Protection Board, an arbitrator, the Court of Appeals for Veterans Claims, or other tribunal. Nor may other lay spokespersons like relatives or friends represent you in this court. An executor or administrator of the estate of an appellant or petitioner also must be represented by counsel. Corporations and associations cannot proceed pro se and must be represented by counsel.

Available materials.

2. Your pro se case is subject to the United States Code, Federal Rules of Appellate Procedure, and Federal Circuit Rules. You may obtain the Rules of Practice from the clerk, and you will be sent a copy when your case is docketed. You will find the statutes governing this court’s jurisdiction and related matters in the United States Code, the United States Code Annotated, or the United States Code Service, and the decisions of the court in the Federal Reporter, Second and Third Series (F.2d, F. 3d), all available in many public libraries.

Filing petitions for review or notices of appeal; postmark does not establish timeliness; forms.

3. You must file your petition for review or notice of appeal within the time allowed by the statute that authorizes it. Your petition or notice is not considered filed at the time it is postmarked by the U.S. Postal Service; it must actually be received in the place for filing within the time allowed by statute. The statutes allow these times for filing:

Merit Systems Protection Board—If you petitioned the Merit Systems Protection Board to review the initial decision of the Board’s administrative judge, you have 60 days after you receive notice of the Board’s action on your petition to file a petition for review with the clerk of this court. If you did not petition the Board to review the initial decision of the Board’s administrative judge, you have 60 days to file a petition for review with the clerk of this court after the time to petition the Board expires. If you petition both the Board and this court to review the initial decision of the administrative judge, your petition to this court will be dismissed as premature.

Either your employing agency or the Office of Personnel Management as named in the order of the Merit Systems Protection Board, or the board itself, will be the respondent in your petition for review. In your petition for review, you should name as respondent the agency captioned in the board’s order on your appeal. If the board should be the respondent rather than the agency, you will be notified by the clerk.

Arbitrator—You have 60 days after you receive notice of the Arbitrator’s decision to file a petition for review with the clerk of this court. Arbitration awards in the U.S. Postal Service, however, are not appealable.

General Accounting Office Personnel Appeals Board—You have 30 days after you receive notice of the Board’s decision to file a petition for review with the clerk of this court.

Patent and Trademark Office Boards—You have 2 months from the date of an initial decision of the Board of Patent Appeals and Interferences or the Trademark Trial and Appeal Board in which to file a notice of appeal with the Patent and Trademark Office. If you asked the board to reconsider your case, you have 2 months from the date of the decision on reconsideration in which to file a notice of appeal with the Patent and Trademark Office. A notice of appeal must actually reach the Patent and Trademark Office within the 2-month period. If mailed, the notice should be addressed:

**Box 8
U.S. Patent and Trademark Office
Washington, DC 20231
Attn: Office of the Solicitor**

A copy of the notice of appeal must also be sent to the clerk of this court.

Boards of Contract Appeals—You have 120 days after receiving the decision of a Board of Contract Appeals in which to file a notice of appeal with the clerk of this court.

International Trade Commission—You have 60 days after a determination of the International Trade Commission becomes final to file a notice of appeal with the clerk of this court.

District Courts; Court of International Trade; Court of Federal Claims; and Court of Appeals for Veterans Claims—You have 30 days from the date of entry of the judgment or order to file a notice of appeal with the clerk of the district court, the Court of International Trade, the Court of Federal Claims, or the Court of Appeals for Veterans Claims. You have 60 days when the government was the other party in one of these courts. If your Court of Federal Claims case involved vaccine compensation, file your petition for review with the clerk of this court.

Judicial review under the Administrative Procedures Act of rule making by the Department of Veterans Affairs (VA)—You may seek judicial review in this court of VA rule making only if you are challenging the publication or promulgation of a VA rule or regulation. If you have a VA claim and you seek to challenge the VA's application of the veterans' benefits statutes to the facts of your particular claim as it has been adjudicated in the VA, you may not do so under the guise of seeking judicial review of VA rule making concerning the rules used to adjudicate your claim. If you want your claim reviewed in this court, it must first be reviewed in the Court of Appeals for Veterans Claims. When reviewing your claim, both this court and the Court of Appeals for Veterans Claims will review the legality of the VA rules used to adjudicate your claim to the extent permitted by statute.

Office of Compliance—You have 90 days after the entry of a final decision in the records of the Office of Compliance to file a petition for review with the clerk of this court.

Equal Employment Opportunity Commission (or other entity designated by the President)—You have 30 days after the receipt of a final order to file a petition for review with the clerk of this court. EEOC orders reviewable in this court pertain only to certain Presidential appointees. EEOC orders pertaining to discrimination claims in MSPB appeals are not reviewable in this court.

Timeliness—If a notice of appeal or petition for review filed with the clerk shows on its face that it is not timely filed within the time allowed by statute to appeal or petition, the clerk will reject the notice of appeal or petition. When it cannot be determined from the facts set forth whether a notice of appeal or petition for review is timely, but the clerk has reason to believe it may be untimely, the clerk will ascertain from the board or agency whose decision is the subject of the appeal or petition when notice of its decision was received by the appellant or petitioner and will thereupon make a determination of timeliness. If the clerk determines that the appeal or petition for review is untimely, the clerk will reject it. Thereafter, if the appellant or petitioner submits proof of timeliness, the clerk will enter the appeal or petition for review upon the docket of the court.

Extensions of time to appeal or to petition for review requested in the court of appeals; in the district court—This court lacks authority to extend the time to appeal or to petition for review because the applicable statutes do not confer on the court the power to waive or extend the time to appeal or petition. When an application or request to extend the time to appeal or petition is received, if the time to appeal or petition has not yet passed, the application or request will be deemed to be the appeal or petition for review, and it will be placed on the docket by the clerk. However, if the time to appeal or petition has passed, the application or request will be returned by the clerk without judicial action as the court lacks authority to extend the time to appeal or to petition for review. An application or request to extend the time to file a notice of appeal from the judgment of a district court, the Court of International Trade, or the Court of Federal Claims should be filed in those courts.

Forms—You do not need a special form for a petition for review or a notice of appeal, but you may use the forms provided in the Appendix of Forms in the court's Rules of Practice. You will also find these forms wherever the Federal Rules of Appellate Procedure are reprinted. You should put your current mailing address and telephone number on the petition or notice. You should include on the petition or notice the file number of the case when it was in the board, commission, or court and the date you received notice of the decision or judgment. You should attach a copy of the board's, commission's, or court's judgment, decision or opinion to the petition or notice. All papers must be 8 1/2 by 11 inches.

Fees.

4. You are required to pay a docketing fee of \$100 to the clerk of this court when you petition for review of, or appeal, a decision of a board or commission. If you appeal a judgment of a court, you must pay a docketing fee of \$100 and also pay a filing fee of \$5, both to the clerk of that court when you file a notice of appeal in that court. If the fees have not been paid or if you have not filed a motion for leave to proceed in forma pauperis within 14 days after the case is docketed in this court, the case will be dismissed.

Permission to proceed in forma pauperis; waiving fees.

5. You may qualify to proceed in forma pauperis if the court determines that you are unable to pay the fees. Permission to proceed in forma pauperis means that the filing and docketing fees and certain requirements concerning formal briefs are waived; it does not mean that a free transcript of the hearing or trial will be provided, or that a free lawyer will be appointed, or that the assessment of costs will be waived. You are automatically qualified to proceed in forma pauperis if the district court, Court of International Trade, Court of Federal Claims, or Court of Appeals for Veterans Claims has granted you that right and not revoked it. Otherwise, you may request to proceed in forma pauperis on a form available from the clerk of this court. You are required to disclose all your financial resources on the form. You should file the form with your petition for review, but if you do not file it at that time, it must be filed within 14 days of the date of docketing.

If you are a prisoner and file a notice of appeal in this court, the Clerk's Office will forward to you a blank motion and affidavit for leave to proceed in forma pauperis and a supplemental authorization and affidavit form. You must complete and file the supplemental form, and the Clerk's Office will send a copy to the institution in which you are incarcerated. The form authorizes the institution to (1) furnish to this court a certified copy of your prison account statement and (2) calculate and disburse funds from the prison account, including the initial partial filing fee payment and subsequent monthly payments. Your institution will forward the certified statement, the initial payment, and the subsequent payments to this court. If you file the proper form, the failure of the institution to send the statement or to remit the payments shall not adversely affect your appeal. If, however, you do not submit the motion and affidavit for leave to proceed IFP and the supplemental in forma pauperis form within 14 days of the date of docketing, the prisoner's appeal shall be dismissed.

Discrimination claims in Merit Systems Protection Board cases.

6. This court does not have jurisdiction to review cases involving bona fide claims of discrimination based on race, sex, age, national origin, or handicap that were raised before the Merit Systems Protection Board. If your case involves such claims and you are unwilling to abandon them forever, you must proceed in a district court (which will hear all your claims, both discrimination and nondiscrimination) or before the Equal Employment Opportunity Commission (which will hear your discrimination claims only). You may waive your discrimination claims on the Federal Circuit Rule 15(c) form sent to you by the clerk. If you fail to complete and return the form within 14 days after the date of docketing, the clerk will dismiss your petition for review. A discrimination issue raised for the first time in this court does not affect the jurisdiction of the court to decide the issues raised before the Board, and such a discrimination claim will be disregarded.

This court does not conduct new trials or hearings; additional limitation in appeals from the Court of Appeals for Veterans Claims.

7. This court reviews only what a board, commission, or court did in your case. You cannot retry the facts before this court. Review is limited to the written record of proceedings that were held in the board, commission, or court. You cannot raise in this court matters that you did not present first before the board, commission, or court. You must show that the version of the facts accepted by the board or commission is not supported by substantial evidence or that the version of the facts accepted by the court is clearly erroneous. If you show that the board, commission, or court erred, you must also show that the error materially affected the outcome of your case. Minor procedural errors rarely affect the outcome of a case. Procedural errors are usually deemed waived if not raised first before the board, commission, or court. If you are successful before this court, the court may issue a decision in your favor or it may send the case back (remand) for further proceedings before the board, commission, or court.

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If you are appealing from the Court of Appeals for Veterans Claims, this court has the additional limitation that it may not review either challenges to factual determinations about your claim that were affirmed in the Court of Appeals for Veterans Claims or challenges to VA laws or regulations as applied to the facts of your claim. If you make only these kind of challenges in your appeal to this court, the court will dismiss your appeal.

Cases dismissed for lack of jurisdiction or for untimeliness.

8. If the board, commission, or court dismissed your case for lack of jurisdiction or because you did not file on time, you must limit your petition for review or appeal to these issues. In that situation, this court will not consider the merits of your case (whether you deserve to win or lose your case on the facts and the law) and, if this court were to reverse the board, commission, or court on its jurisdictional or timeliness ruling, your case would be remanded to the board, commission, or court to consider the merits. If jurisdiction or timeliness was the basis of the decision you are appealing, you will waste your time and effort, and will unduly burden this court, if you discuss the merits.

Frivolous petitions for review and appeals will be penalized.

9. If you file and proceed with a frivolous petition for review or appeal, you are subject to the imposition of damages, double costs, and attorney fees payable to the other party. "Frivolous" means clearly hopeless and unquestionably without any basis whatever in fact or law. You may require the advice of an attorney in making your decision that your case is not frivolous.

Withdrawing a pro se petition for review or appeal.

10. You may ordinarily withdraw your pro se petition for review or appeal at any time before this court decides your case. To withdraw your case simply advise the clerk by letter, "I withdraw my case." Serve a copy of your letter on the other party. The Department of Justice will ordinarily consent to the withdrawal of a pro se case on the condition that each party bear its own costs. This court will ordinarily not assess damages, double costs, or attorney fees for filing a frivolous petition for review or appeal if it is voluntarily withdrawn within 14 days after you receive the other party's brief. Serious consideration should be given to voluntarily withdrawing your case if the other party's brief makes a strong argument that you are pursuing a frivolous case.

Record.

11. If you need access to the original record of the board, commission, or court proceedings, you must contact the board, commission, or court because the original record is not forwarded to this court.

Service of notice of appearance, briefs, appendices, motions, letters, and other documents.

12. You must serve on counsel for the other party (by mail or by personal delivery) a copy of all notices of appearance, briefs, appendices, motions, letters, and other documents you send to the court. Make sure this court's docket number appears on every document. You must serve opposing counsel using the name and address contained on the entry of appearance form filed by that counsel and served on you. The clerk will not file and may return any material that is not accompanied by a certificate from you stating that you have served the other party with a copy of all the material sent to the court. A sample certificate follows:

CERTIFICATE OF SERVICE

I certify that I mailed my informal brief to John Doe, Esq., at the address listed on his entry of appearance.

The certificate of service may be included at the end of the material you are filing or it may be on a separate paper attached to that material. You may also make the certification of service on a photocopy of the opposing counsel's copy of the entry of appearance that was served on you and attach it to whatever you file with the clerk.

Informal briefs; appendix; petitions for rehearing; motions; length; new evidence; correspondence generally.

13. You may file an informal brief (original and three copies) on an accelerated schedule, using a form provided by the clerk of this court. You must include an appendix containing, as appropriate, the initial and final decisions of the Merit Systems Protection Board, the final decision of another board or commission, the judgment and opinion of the court, or the rule or rules that are the subject of your petition for judicial review of VA rule making. The informal brief is the only permissible substitute

for the brief required by the Federal Rules of Appellate Procedure and Federal Circuit Rules. The informal brief together with any continuation pages needed for answers that will not fit on the form may not exceed 30 typewritten (14-point type only), double-spaced pages with 1-inch margins, or their equivalent in content. You may employ a letter to the clerk (original and three copies) in replying to an opponent's brief, in requesting a rehearing, or in submitting or responding to a motion, as no forms are provided for these submissions. Such letters when typewritten (14-point type only) and double spaced with 1-inch margins may not exceed the page limits provided in the rules for reply briefs (5 typewritten, double-spaced pages, see Fed. Cir. R. 31(e)), petitions for rehearing (15 pages), and motions or responses to motions (20 pages), or the equivalent in content if not typewritten. Continuation pages for an informal brief, letters, and any other correspondence you submit must be on 8 1/2-by 11-inch paper. In replying to an opponent's brief, you may not make new arguments that are unrelated to the arguments in that brief. When requesting rehearing, attach a copy of the court's opinion or judgment of affirmance without opinion to your letter and each of the three copies of the letter. Do not attempt to supplement the record on appeal with new evidence that was not considered at your hearing or trial. Any such new evidence will be returned by the clerk. There is usually no need to correspond by letter except for the matters described in this paragraph. Copies of correspondence with others about your appeal are not part of the record on appeal and may be returned by the clerk.

Timetable for filing briefs; dismissal for default.

14. Informal briefs—In a petition for review or appeal from a board or commission or for judicial review of VA rule making, you must file an informal brief within 21 days after the certified list or index is served. In an appeal from a court, you must file an informal brief within 21 days after the appeal is docketed. The other party may file either an informal brief within 21 days or a formal brief within 40 days after service of your informal brief. If you file a brief before the certified list or index is served and filed, the other party's time runs from service and filing of the certified list or index. If you attempt to serve government counsel using a name and address other than that contained on the entry of appearance served on you, the time for filing the government's informal brief will not begin to run until the government attorney appearing in the case has actually received your brief. You may then file a reply brief in letter form within 10 days after service of the other party's brief.

Formal briefs—If you elect to file a formal brief, the brief and appendix must comply with the strict requirements of the Federal Rules of Appellate Procedure and the Federal Circuit Rules or the brief and appendix will not be accepted. A formal brief is due 60 days after the certified list is served in board or commission cases or 60 days after the case is docketed in court cases. The other party must file a formal brief within 40 days of service of your formal brief or the certified list, whichever is later. Any reply must be a formal reply brief filed within 14 days of service of the other party's brief.

Dismissal for default—If you fail to file a brief or comply with other rules, the clerk will dismiss your appeal or petition. However, if the appellee or respondent fails to comply with the rules, you are not entitled to the relief you seek solely by reason of that noncompliance, because the appellant or petitioner always has the burden to establish entitlement to relief in the court of appeals and cannot meet that burden by the failure of another to comply with the rules.

Oral argument.

15. Oral argument (usually 15 minutes or less) is rarely needed in pro se cases. However, you may request to argue your case before the court, giving reasons why that would aid the court. If you are granted oral argument you must bear your own travel expenses to the court.

Recovery of costs.

16. If you lose before this court, you will normally be responsible for paying the costs of the other party. If you prevail, you will normally have your own costs paid by the other party. "Costs" means the expenses of printing or copying briefs and appendices, and may amount to several hundred dollars. Attorney fees are not costs. If you are responsible for costs, the matter is between you and the other party, and the court will not resolve any dispute between the parties once the costs have been taxed. In appeals from the Patent and Trademark Office, each party bears its own costs on appeal.

Attorney fees.

17. You are not entitled to payment for your own services in pursuing your case pro se, because only an attorney may be awarded attorney fees. Before filing a petition for review or an appeal you may wish to seek a lawyer who might be willing to undertake the case on the contingency that the attorney fees may be payable under the Equal Access to Justice Act.

Change of address.

18. You must file and serve a new notice of appearance if you change your address while your case is pending.

Notice of the court's decision.

19. You will be sent a copy of the court's opinion in your case by mail on the day it is filed with the clerk. If the court decides your appeal without preparing an opinion, you will be sent a copy of the judgment of affirmance without opinion. If you file a petition for rehearing, it must be received within 14 days of the date of the court's opinion. If the United States is a party, then you have 45 days to appeal. Untimely petitions for rehearing will be returned. Rehearings are rarely granted. Do not file a motion to alter or amend a judgment or a motion for relief from judgment as those motions are appropriate only in proceedings governed by Federal Rules of Civil Procedure 59 and 60, which do not apply in this court.

Additional information.

20. For information, you may call the Clerk's Office at (202) 633-6550 or write to the Clerk, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Washington, DC 20439. Collect calls are not accepted. The staff of the Clerk's Office will answer questions about procedures, but they are not permitted to give you legal advice or to recommend how you should pursue your appeal.